

UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Ziya Arslankiray et al.
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Examiner: Shawn M. Braden
Title: EGG TRAY

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

Pursuant to 37 CFR 41.41, Appellants hereby file a reply brief in response to the Examiner's Answer dated August 19, 2010, in the above-identified application, within the 2-month reply deadline.

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(1) REAL PARTY IN INTEREST

The real party in interest is BSH Bosch und Siemens Hausgeräte GmbH.

(2) RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) STATUS OF CLAIMS

Claims 13-36 are pending in the present application. Claims 1-12 were canceled. Claim 36 has been indicated as being allowable if rewritten independent form. The final rejections of claims 13-35 are being appealed.

Claims 13, 26, and 35 are independent.

(4) STATUS OF AMENDMENTS

The Advisory Action dated April 6, 2010, states that the amendments to claims 32 and 35 as submitted in the Amendment filed on March 23, 2010, appear to correct the issues under 35 U.S.C. § 112, first paragraph, but that the changes are possible new matter, and would require further consideration and further searching. Therefore, the Advisory Action states that these amendments have not been entered.

Hence, the pending claims identified in the Claims Appendix correspond to the claims entered following the submission of the Amendment on November 18, 2009, which was entered by the final Office Action dated February 1, 2010.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

An exemplary embodiment of the present invention, as recited by, for example, independent claim 13, is directed to an egg tray (e.g., 9) for a refrigerator, comprising

a support plate (e.g., 1) in which a plurality of receptacles (e.g. 2) for respectively one egg is formed (e.g., paragraph [019]), and

a wall (see, e.g. 7) surrounding the support plate (e.g. 1) (e.g., paragraph [021]),

wherein the receptacles are formed by openings (e.g., 2) in the support plate (e.g., 1) (e.g., paragraph [019]) and that the surrounding wall (e.g., 7) is divided into a plurality of wall sections (e.g., 7) separated by recesses (e.g., 11) (e.g., paragraph [021]).

Claim 14 depends from claim 13 and recites wherein the wall sections (e.g., 7) are each constructed such that they project over a circumference (e.g., 8) of the support plate (e.g., 1) (e.g., paragraph [021], [026]).

Claim 15 depends from claim 14 and recites wherein a section of the circumference (e.g., 8) of the support plate (e.g., 1) on which an upright wall section (e.g., 7) is arranged so that it projects over the circumference (e.g., 8) is located diametrically opposite to a section of the circumference (e.g., 8) on which a recess (e.g., 11) is located (e.g., paragraph [010], [021], [024], and [026]).

Claim 16 depends from claim 14 and recites wherein at least two wall sections (e.g., 7) are arranged on a longitudinal edge of the support plate (e.g., 1) (e.g., paragraph [021]; Figure 1).

Claim 17 depends from claim 13 and recites a spacer (e.g., 12) disposed on an underside of the support plate (e.g. 1) (e.g., paragraph [023]).

Claim 18 depends from claim 13 and recites a second egg tray (e.g., 10) including a second support plate (e.g. 1; see Figure 3) in which a plurality of receptacles (e.g., 2) for respectively one egg is formed, and a second wall (e.g., 7) surrounding the second support

plate (e.g., 1; see Figure 3), wherein the receptacles are formed by openings (e.g., 2) in the second support plate (e.g., 1; see Figure 3) and that the second surrounding wall is divided into a plurality of second wall sections (e.g., 7) separated by recesses (e.g., 11) (e.g., paragraph [008], [009], [022], [023]).

Claim 19 depends from claim 18 and recites wherein the wall sections (e.g., 7) of the egg tray differ in height from the second wall sections (e.g., 7) of the second egg tray (e.g., paragraph [023]).

Claim 20 depends from claim 18 and recites wherein the wall sections (e.g., 7) of the egg tray (e.g., 9) and the second wall sections (e.g., 7) of the second egg tray (e.g., 10) have substantially the same dimensions with regard to height (e.g., paragraph [023]).

Claim 21 depends from claim 18 and recites wherein the two egg trays (e.g., 9, 10) can be stacked by engagement of the wall sections (e.g., 7) of one of the egg trays (e.g., 9, 10) into the recesses (e.g., 11) of the other egg tray (e.g., paragraph [023]).

Claim 22 depends from claim 13 and recites a handle (e.g., 3) projecting from the support plate (e.g., 1) above its center of gravity (e.g., paragraph [011]).

Claim 23 depends from claim 22 and recites wherein in addition to the handle (e.g., 3), a slit (e.g., 5) is formed in the support plate (e.g., 1) through which a handle (e.g., 3) of a second egg tray can be passed (e.g., paragraph [011] - [013], [020], [022], [023], [025]).

Claim 24 depends from claim 22 and recites wherein the handle has the form of a plate (e.g., 3) and that one surface of the plate (e.g., 3) is directly adjacent to the slit (e.g., 5) (e.g., paragraph [011] - [013], [020], [022], [023], [025]).

Claim 25 depends from claim 24 and recites wherein the plate (e.g., 3) is thicker in its upper area (e.g., 6) (e.g., paragraph [01], [025]).

An exemplary embodiment of the present invention, as recited by, for example, independent claim 26, is directed to an egg tray set (e.g., 9, 10) for a refrigerator, comprising:

a first egg tray (e.g., 9) and a second egg tray (e.g., 10) (e.g., Figure 3), each egg tray (e.g., 9, 10) having a support plate (e.g., 1) in which a plurality of receptacles (e.g., 2) for respectively one egg (e.g., 9, 10) is formed (e.g., paragraph [008], [009], [022], [023]), and a wall (e.g., 7) surrounding the support plate (e.g., 1) (e.g., paragraph [021]),

wherein the receptacles (e.g., 2) are formed by openings (e.g., 2) in the support plate (e.g., 1) and that the surrounding wall (e.g., 7) is divided into a plurality of wall sections (e.g., 7) separated by recesses (e.g., 11) (e.g., paragraph [021]);

a handle (e.g., 3) projecting upwardly from the support plate (e.g., 1) of each egg tray (e.g., 9, 10) above its center of gravity and a slit (e.g., 5) is formed in the support plate (e.g., 1) of each egg tray, the handle (e.g., 3) of one of the egg trays (e.g., 9, 10) being receivable through the slit (e.g., 5) of the other egg tray (e.g., 9, 10) to interconnect the egg trays (e.g., 9, 10) (e.g., paragraph [011] - [013], [020], [022], [023], [025]); and

the first and second egg trays (e.g., 9, 10) being stackable with one another by engagement of the wall sections (e.g., 7) of one of the egg trays (e.g., 9, 10) into the recesses (e.g., 11) of the other egg tray (e.g., 9, 10) (e.g., paragraph [023]).

Claim 27 depends from claim 26 and recites wherein the wall sections (e.g., 7) of the first egg tray (e.g., 9) differ in height from the wall sections (e.g., 7) of the second egg tray (e.g., 10) (e.g., paragraph [023]).

Claim 28 depends from claim 26 and recites wherein the wall sections (e.g., 7) of the first and second egg trays (e.g., 9, 10) have substantially the same dimensions with regard to height (e.g., paragraph [023]).

Claim 29 depends from claim 26 and recites wherein each egg tray (e.g., 9, 10) includes a spacer (e.g., 12) disposed on an underside of the support plate (e.g., 1), the spacer (e.g., 12) of one of the egg trays (e.g., 9, 10) contacting a top side of the support plate (e.g., 1) of the other egg tray (e.g., 9, 10) to space the support plates (e.g., 1) of the respective egg trays (e.g., 9, 10) apart from one another when the egg trays (e.g., 9, 10) are stacked one above the other (e.g., paragraph [023]).

Claim 30 depends from claim 26 and recites wherein the receptacles (e.g., 2) of the first and second trays (e.g., 9, 10) are aligned with one another when the egg trays (e.g., 9, 10) are stacked (e.g., paragraph [022]).

Claim 31 depends from claim 13 and recites wherein the support plate (e.g., 1) has an upper surface and a lower surface, and wherein the wall sections (e.g., 7) project over a circumference (e.g., 8) of the support plate (e.g., 1) and downward from the support plate (e.g., 1) in a direction opposite from the upper surface (e.g., paragraph [021], [026]).

Claim 32 depends from claim 13 and recites wherein each of the plurality of wall sections (e.g., 7) of the surrounding wall is located diametrically opposite to a recess (e.g., 5) of the surrounding wall (e.g., paragraph [010], [021], [024], and [026]).

Claim 33 depends from claim 22 and recites wherein the handle is a plate (e.g., 3), and wherein only one surface of the handle (e.g., 3) is directly adjacent to the slit (e.g., 5) (e.g., paragraph [013]).

Claim 34 depends from claim 18 and recites wherein, when the egg tray and the second egg tray (e.g., 9, 10) are twisted 180° with respect to each other and stacked together, the plurality of wall sections (e.g., 7) of the egg tray (e.g., 9, 10) engage the recesses (e.g., 11) of the second egg tray (e.g., 9, 10), and the plurality of second wall sections of the second egg tray (e.g., 9, 10) engage the recesses (e.g., 11) of the egg tray (e.g., 9, 10) (e.g., paragraph [008], [022]).

An exemplary embodiment of the present invention, as recited by, for example, independent claim 35, is directed to an egg tray (e.g., 9, 10) for a refrigerator, comprising:

a support plate (e.g., 1) having an upper surface and a lower surface, the support plate (e.g., 1) including a plurality of receptacles (e.g., 2), each for respectively supporting one egg, the receptacles (e.g., 2) being openings formed in the support plate (e.g., 1) (e.g., paragraph [008], [009], [022], [023]);

a handle (e.g., 3) extending from the upper surface of the support plate (e.g., 1) (e.g., paragraph [011] - [013], [020], [022], [023], [025]); and

a wall surrounding the support plate (e.g., 1), the wall including a plurality of wall sections (e.g., 7) separated by recesses (e.g., 11) formed in the wall surrounding the support plate (e.g., 1) (e.g., paragraph [007] - [009], [021] - [023]),

wherein the plurality of wall sections (e.g., 7) extend downward from the support plate (e.g., 1) in a direction opposite from the handle (e.g., 3) (e.g., paragraph [007] - [009], [021] - [023]), and

wherein each of the plurality of wall sections (e.g., 7) of the wall surrounding the support plate (e.g., 1) is located diametrically opposite to one of the recesses (e.g., 5) formed in the wall surrounding (e.g., 11) the support plate (e.g., 1) (e.g., paragraph [010], [021], [024], and [026]).

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- a. Whether claims 32 and 35 are indefinite under 35 U.S.C. § 112, second paragraph, for allegedly failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
- b. Whether claims 32 and 35 comply with the written description requirement under 35 U.S.C. § 112, first paragraph.
- c. Whether claims 13-32, 34, and 35 are unpatentable under 35 U.S.C. § 103(a) over the Fierek et al. reference (U.S. Patent No. 5,669,498) in view of the Cox et al. reference (U.S. Patent No. 5,344,023).
- d. Whether claim 33 is unpatentable under 35 U.S.C. § 103(a) over the Fierek et al. reference, the Cox et al. reference, and further in view of the Peeples reference (U.S. Patent No. 3,392,874).

(7) ARGUMENT

- a. Claims 32 and 35 are NOT indefinite under 35 U.S.C. § 112, second paragraph, for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention

The Office Action rejects claims 32 and 35 under 35 U.S.C. 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Appellants respectfully traverse this rejection.

The Advisory Action dated April 6, 2010, states that the amendments to claims 32 and 35 as submitted in the Amendment filed on March 23, 2010, appear to correct the issues under 35 U.S.C. § 112, second paragraph, but that the changes are possible new matter, and would require further consideration and further searching.

First, Appellants respectfully submit that the amendments to claims 32 and 35 as submitted in the Amendment filed on March 23, 2010, clearly are NOT new matter, and would NOT require further consideration and further searching. Indeed, the features of each of the plurality of wall sections of the surrounding wall along a longitudinal edge of the support plate being located diametrically opposite to a recess of the surrounding wall are clearly illustrated in each of original Figures 1-3.

Hence, since these features are clearly illustrated in the original Figures 1-3, Appellants respectfully submit that the original disclosure and figures convey with reasonable clarity to those skilled in the art that the features of claims 32 and 35 were in possession of the Appellants, as of the filing date. Moreover, these features were considered and examined in the Office Action dated February 1, 2010, and therefore, clearly would not require further search and consideration.

Second, with regard to the features of claims 32 and 35, as submitted in the Amendment filed on November 18, 2009, and as entered by the final Office Action dated February 1, 2010, Appellants respectfully submit that claims 32 and 35 are not indefinite under 35 U.S.C. § 112, second paragraph.

M.P.E.P. § 2173.02 sets out the standard for complying with 35 U.S.C. § 112, second paragraph:

The essential inquiry pertaining to the requirement under 35 U.S.C. § 112, second paragraph, is ‘whether the claims set out and circumscribe a particular subject matter with a reasonable degree of clarity and particularity. Definiteness of claim language must be analyzed, not in a vacuum, but in light of: (A) the content of the particular application disclosure; (B) the teachings of the prior art; and (C) the claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made.’

Appellants respectfully submit that, when properly considered as a whole in view of the original disclosure and Figures 1-3, one of ordinary skill in the art would know and understand the metes and bounds of the claimed invention. Indeed, one of ordinary skill in the art clearly would understand that each of the plurality of wall sections of the surrounding wall is located diametrically opposite to a recess of the surrounding wall.

Appellants note that the term “diametrically” commonly is defined as “of, relating to, or constituting a diameter : located at the diameter” or “completely opposed : being at opposite extremes <in diametric contradiction to his claims” by Merriam-Webster Online Dictionary. See, *diametric*. (2010), in Merriam-Webster Online Dictionary, retrieved May 27, 2010, from <http://www.merriam-webster.com/dictionary/diametric>.

Hence, each of the plurality of wall sections of the surrounding wall is located diametrically opposite to a recess of the surrounding wall when viewed across a diameter of the egg tray. Appellants respectfully submit that one of ordinary skill in the art clearly would understand that the wall sections located at the longitudinal ends of the egg tray are not across the diameter of the egg tray, but rather across the longitudinal length of the egg tray.

Appellants respectfully submit that, when properly considered as a whole in view of the original disclosure and Figures 1-3, one of ordinary skill in the art would know and understand the metes and bounds of the claimed invention.

Appellants respectfully request withdrawal of this rejection.

The Examiner's Answer dated August 19, 2010

The Examiner's Answer dated August 19, 2010, states that the claim language in question is "the plurality of wall sections of the surrounding wall is located diametrically opposite to a recess of the surrounding wall" and provided an annotated Figure 1. Appellants respectfully traverse this rejection.

Appellants note that the term "diametrically" commonly is defined as "of, relating to, or constituting a diameter : located at the diameter" or "completely opposed : being at opposite extremes <in diametric contradiction to his claims" by Merriam-Webster Online Dictionary. See, *diametric*. (2010), in Merriam-Webster Online Dictionary, retrieved May 27, 2010, from <http://www.merriam-webster.com/dictionary/diametric>.

Hence, each of the plurality of wall sections of the surrounding wall is located diametrically opposite to a recess of the surrounding wall **when viewed across a diameter of the egg tray**. As shown in the annotated Figure 1, each of the plurality of wall sections of the surrounding wall is located diametrically opposite to a recess of the surrounding wall **when viewed across a diameter of the egg tray**. One of ordinary skill in the art clearly would understand that the wall sections located at the longitudinal ends of the egg tray are not across the diameter of the egg tray, but rather across the longitudinal length of the egg tray.

Thus, when properly considered as a whole in view of the original disclosure and Figures 1-3, one of ordinary skill in the art would know and understand the metes and bounds of the claimed invention. Indeed, one of ordinary skill in the art clearly would understand that each of the plurality of wall sections of the surrounding wall is located diametrically opposite to a recess of the surrounding wall.

Appellants respectfully request withdrawal of this rejection.

- b. Claims 32 and 35 comply with the written description requirement under 35 U.S.C. § 112, first paragraph.

The Office Action rejects claims 32 and 35 under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement.

Appellants respectfully traverse this rejection.

The Advisory Action dated April 6, 2010, states that the amendments to claims 32 and 35 as submitted in the Amendment filed on March 23, 2010, appear to correct the issues under 35 U.S.C. § 112, first paragraph, but that the changes are possible new matter, and would required further consideration and further searching.

First, as explained above, Appellants respectfully submit that the amendments to claims 32 and 35 as submitted in the Amendment filed on November 18, 2009, and as entered by the final Office Action dated February 1, 2010, clearly are NOT new matter, and would NOT require further consideration and further searching. Indeed, the features of each of the plurality of wall sections of the surrounding wall along a longitudinal edge of the support plate being located diametrically opposite to a recess of the surrounding wall are clearly illustrated in each of original Figures 1-3.

M.P.E.P. § 2163.02 sets out the standard for complying with the written description requirement of 35 U.S.C. § 112, first paragraph:

"An objective standard for determining compliance with the written description requirement is, "does the description clearly allow persons of ordinary skill in the art to recognize that he or she invented what is claimed. [...] to satisfy the written description requirement, an applicant must convey with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of the invention, and that the invention, in that context, is whatever is now claimed."

Whenever the issue arises, the fundamental factual inquiry is whether the specification conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, applicant was in possession of the invention as now claimed. [...] An applicant shows possession of the claimed invention by describing the claimed invention with all of its limitations using such descriptive means as words, structures, figures, diagrams, and formulas that fully set forth the claimed invention.

Hence, since these features are clearly illustrated in the original Figures 1-3, Appellants respectfully submit that the original disclosure and figures convey with reasonable clarity to those skilled in the art that the features of claims 32 and 35 were in possession of the Appellants, as of the filing date. Moreover, these features were considered and examined in the Office Action dated February 1, 2010, and therefore, clearly would not require further search and consideration.

Second, with regard to the features of claims 32 and 35, as entered by the final Office Action dated February 1, 2010, Appellants respectfully submit that the original disclosure and figures convey with reasonable clarity to those skilled in the art that the features of claims 32 and 35 were in possession of the Appellants, as of the filing date.

Claim 32 recites wherein each of the plurality of wall sections of the surrounding wall is located diametrically opposite to a recess of the surrounding wall.

Claim 35 recites wherein each of the plurality of wall sections of the wall surrounding the support plate is located diametrically opposite to one of the recesses formed in the wall surrounding the support plate.

The specification very clearly describes an exemplary embodiment in which each of the plurality of wall sections of the surrounding wall is located diametrically opposite to a recess of the surrounding wall, as recited in claim 32, and each of the plurality of wall sections of the wall surrounding the support plate is located diametrically opposite to one of the recesses formed in the wall surrounding the support plate, as recited in claim 35. See, e.g., paragraphs [010], [021], [024], and [026].

Appellants note that the term “diametrically” commonly is defined as “of, relating to, or constituting a diameter : located at the diameter” or “completely opposed : being at opposite extremes <in diametric contradiction to his claims” by Merriam-Webster Online Dictionary. See, *diametric*. (2010), in Merriam-Webster Online Dictionary, retrieved May 27, 2010, from <http://www.merriam-webster.com/dictionary/diametric>.

Hence, each of the plurality of wall sections of the surrounding wall is located diametrically opposite to a recess of the surrounding wall when viewed across a diameter of the egg tray. Appellants respectfully submit that one of ordinary skill in the art clearly would understand that the wall sections located at the longitudinal ends of the egg tray are not across the diameter of the egg tray, but rather across the longitudinal length of the egg tray.

Since these features are clearly disclosed in the original disclosure, Appellants respectfully submit that the original disclosure and figures convey with reasonable clarity to those skilled in the art that the features of claims 32 and 35 were in possession of the Appellants, as of the filing date.

Appellants respectfully request withdrawal of this rejection.

- c. Claims 13-32, 34, and 35 are NOT unpatentable under 35 U.S.C. § 103(a) over the Fierek et al. reference (U.S. Patent No. 5,669,498) in view of the Cox et al. reference (U.S. Patent No. 5,344,023). .

In the Office Action, claims 13-32, 34, and 35 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the Fierek et al. reference (U.S. Patent No. 5,669,498) in view of the Cox et al. reference (U.S. Patent No. 5,344,023).

Appellants respectfully traverse this rejection.

Independent Claim 13

Appellants respectfully submit that none of the applied references discloses or suggests the features of the claimed invention including an egg tray for a refrigerator a refrigerator, comprising a support plate in which a plurality of receptacles for respectively one egg is formed, and a wall surrounding the support plate, wherein the receptacles are formed by openings in the support plate and that the surrounding wall is divided into a plurality of wall sections separated by recesses, as recited in independent claim 13.

As explained above, these features are important for providing an egg tray having openings in the support plate, thereby providing effective cooling of the lower area of each egg mounted therein. The surrounding wall is divided into a plurality of wall sections separated by recesses, thereby providing free access of cold air to the lower end of each egg mounted in each opening. See, e.g., page 2, lines 5-6, paragraph [006].

The final Office Action alleges that the Fierek et al. reference discloses a wall 102 surrounding the support plate 68, 70, 72, 74, and that the surrounding wall 102 is divided into a plurality of wall sections separated by recesses 80, 82, 84, 86. The Office Action alleges that the Cox et al. reference discloses forming openings in the support 28.

Contrary to the assertions in the Office Action and the Advisory Action, Appellants respectfully submit that one of ordinary skill in the art would not have had an apparent reason to combine the Fierek et al. reference and the Cox et al. reference in the manner alleged to arrive at the claimed invention. Moreover, the mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art. If the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. See M.P.E.P. § 2143.01.

The Fierek et al. reference discloses a tool organizer having compartments 18, 20, 22, and 24 for holding tools and accessory items of all shapes and sizes, such as nails, screws, bolts, and other accessories. See, e.g., col. 2, lines 52-65. Appellants respectfully submit that one of ordinary skill in the art clearly would not have had an apparent reason to modify the compartments 18, 20, 22, and 24 of the Fierek et al. reference to include openings, as taught by Cox et al., since these openings would render the Fierek et al. reference unsatisfactory for its intended purpose of holding tools and accessory items of all shapes and sizes, such as nails, screws, bolts, and other accessories. Hence, there is no suggestion or motivation to make the proposed modification. See M.P.E.P. § 2143.01.

Moreover, if the openings of the Cox et al. reference were provided in the support plate 68, 70, 72, 74 of the Fierek et al. reference, then the lower end of each of the eggs clearly would be exposed below the alleged support plate 68, 70, 72, 74 and vulnerable to damage. In the Fierek et al. reference, the surrounding wall 102 extends upward from the support plate 68, 70, 72, 74. Thus, the alleged recesses 80, 82, 84, 86 would expose the lower ends of the eggs to possible damage and would not suggest this feature to one of ordinary skill in the art.

Moreover, Appellants respectfully submit that there is nothing in the Fierek et al. reference or the Cox et al. reference that would suggest the claimed combination to one of ordinary skill in the art, or that even recognizes the problems being solved by the present invention.

For example, as shown in Figures 4-8 of the Fierek et al. reference, the alleged recesses 80, 82, 84, 86 have absolutely nothing to do with providing access to cold air to the lower end of each egg mounted in the alleged openings. If the opening of the Cox et al. reference were provided in the support plate 68, 70, 72, 74 of the Fierek et al. reference, then the lower end of each of the eggs clearly would be exposed below the alleged support plate 68, 70, 72, 74. In the Fierek et al. reference, the surrounding wall 102 extends upward from the support plate 68, 70, 72, 74. Thus, the alleged recesses 80, 82, 84, 86 have no affect on

the lower ends of the eggs and would not suggest this feature to one of ordinary skill in the art when combined with the Cox et al. reference.

Moreover, in stark contrast to the claimed invention, the alleged recesses 80, 82, 84, 86 of the Fierek et al. reference would serve to limit access to cold air to the upper end of each egg mounted in the alleged openings. The alleged recesses 80, 82, 84, 86 would not promote access to cold air, since the side panels 112 clearly would obstruct or prevent access to air from the alleged recesses 80, 82, 84, 86 to the upper end of each egg mounted in the alleged openings.

The Cox et al. reference also does not teach or suggest dividing the surrounding wall into a plurality of wall sections separated by recesses in order to provide access to cold air to the lower end of each egg mounted in the alleged openings. Instead, the Cox et al. reference teaches only an uninterrupted peripheral wall 32 surrounding the alleged plate 28.

For at least these reasons, none of the applied references discloses or suggests the claimed invention to one of ordinary skill in the art. Indeed, the applied references have nothing to do with the problems being addressed and solved by the claimed invention.

Furthermore, in the Response to Arguments (pages 11-12, bridging paragraph), the Office Action acknowledges that the end section of the walls above the recesses in Figures 4 or 5 are considered to be wall sections that are diametrically opposite to the alleged recess formed in another wall section. Based on this interpretation, the Fierek et al. reference clearly fails to disclose a plurality of wall sections separated by recesses formed in the wall surrounding the support plate. Indeed, if the portion above the alleged recess is a wall section, then the wall sections are not actually separated from each other by the recesses, as claimed. Rather, the wall sections are still joined to each other across the top of each alleged recess to form a single wall section and there is no separation between wall sections.

Thus, none of the applied references discloses or suggests all of the features of independent claim 13.

Appellants respectfully request reversal of this rejection.

The Advisory Action dated April 6, 2010

In response to Appellants arguments, numbered paragraph 3 of the Advisory Action further alleges that “a person of ordinary skill that wants to hold eggs would add the egg holding components of Cox and combine them with the carrier of Fierek.”

Appellant respectfully submits that such a conclusory statement is insufficient to provide a *prima facie* case for obviousness because the Office Action fails to provide an adequate rationale for combining the prior art as required by *KSR International v. Teleflex Inc.* 82 U.S.P.Q. 2d 1385 (2007).

"[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rationale underpinning to support the legal conclusion of obviousness." (*In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006) cited with approval in *KSR*).

Appellants respectfully submit that the Office Action fails to articulate any reasoning with any rationale underpinning to support a legal conclusion of obviousness. Indeed, the statement that “a person of ordinary skill that wants to hold eggs would add the egg holding components of Cox and combine them with the carrier of Fierek” provides no explanation as to why or how one of ordinary skill in the art would make such a combination. Indeed, since the Cox reference already provides an egg container assembly, one of ordinary skill in the art that wants to hold eggs simply would hold the eggs in the egg container assembly of the Cox reference and would have absolutely no reason to incorporate the features of the egg container assembly of the Cox reference into the Fierek et al. reference.

As such, the final Office Action and Advisory Action fail to present a *prima facie* case for obviousness.

The numbered paragraph 4 of the Advisory Action further alleges that the modifications do not exclude the Fierek reference from holding tools, nails, screws, bolts, and therefore, allegedly does not teach away. The Advisory Action alleges that, just because there

are a few more apertures doesn't exclude a user from putting any tool, nails, screws etc. in the container from storage, and that, in some ways, the modified container allegedly will hold small round or oval tools better.

Contrary to the assertions in the Advisory Action, Appellants respectfully submit that the alleged combination does not add merely a few more apertures. Instead, the alleged combination would add egg-sized openings in the bottom of the support plate. Such openings clearly would not be satisfactory for holding nails, screws, and bolts, which is the purpose explicitly identified in the Ficrek et al. reference. See, e.g., col., 2, lines 52-65.

The numbered paragraph 5 of the Advisory Action further alleges that the features upon which applicant relies (i.e., the lower end of each of the eggs clearly would be exposed be below the alleged support plate) are not recited in the rejected claim(s).

Appellants respectfully submit that these arguments clearly are directed to the reasons that one of ordinary skill in the art would not have had an apparent reason to combine the references in the manner alleged, and therefore, that the claimed invention would not have been rendered obvious under 35 U.S.C. § 103(a) over the alleged combination of these references. Appellants respectfully submit that the Advisory Action has not answered the substance of these traversal positions.

The numbered paragraphs 6-7 of the Advisory Action further allege that the recitation an egg tray for a refrigerator has not been given patentable weight because the recitation occurs in the preamble. Appellants respectfully note that claim 13 clearly recites an egg tray and defines the structural features of such an egg tray. Hence, Appellants respectfully submit that these claim terms properly should be given patentable weight.

The numbered paragraph 8 of the Advisory Action further alleges that the features upon which applicant relies (i.e., cold air) are not recited in the rejected claim(s). Appellants respectfully submit that these arguments clearly are directed to the reasons that one of ordinary skill in the art would not have had an apparent reason to combine the references in the manner alleged, and therefore, that the claimed invention would not have been rendered

obvious under 35 U.S.C. § 103(a) over the alleged combination of these references. Appellants respectfully submit that the Advisory Action has not answered the substance of these traversal positions.

The numbered paragraphs 9-10 of the Advisory Action states that the Examiner is not really sure what point applicant is attempting to make. The Advisory Action states that the callouts and lead lines of Fierek were not written specifically for this rejection, and that the walls and the spaces are clearly shown in Fierek.

First, Appellants respectfully submit that the Amendment filed on March 23, 2010, merely responded to the assertions in the Response to Arguments of the final Office Action dated February 1, 2010, which appear to contradict arguments presented in the text of the rejection.

Claim 13 recites that the surrounding wall is divided into a plurality of wall sections *separated by recesses*.

As explained above, in the Response to Arguments (pages 11-12, bridging paragraph), the final Office Action acknowledged that the end section of the walls above the recesses in Figures 4 or 5 of the Fierek et al. reference are considered to be wall sections that are diametrically opposite to the alleged recess formed in another wall section. Based on this interpretation, the Fierek et al. reference clearly fails to disclose a plurality of wall sections separated by recesses formed in the wall surrounding the support plate. Indeed, if the portion above the alleged recess is a wall section, as apparently alleged, then the wall sections are not actually separated from each other by the recesses, as claimed. Rather, the wall sections are still joined to each other across the top of each alleged recess to form a single wall section and there is no separation between wall sections.

Thus, none of the applied references discloses or suggests all of the features of independent claim 13.

Second, Appellants note that the final Office Action changes between relying on the recesses (i.e., cavities 80, 82, 84, and 86), as applied to claim 13, to relying on the alleged recesses (60, 62, 64), as applied to independent claims 26 and 35.

In either case, Appellants respectfully submit that the alleged recesses (i.e., cavities 80, 82, 84, and 86), as applied to claim 13, or the alleged recesses 60, 62, 64, as applied to claims 26 and 35, do not separate the surrounding wall 102 into a plurality of wall sections, as claimed. Instead, if the portion above the alleged recess (i.e., cavities 80, 82, 84, and 86) is considered a wall section, as apparently alleged, then the wall sections are not actually separated from each other by the recesses (i.e., cavities 80, 82, 84, and 86), as claimed. Rather, the wall sections are still joined to each other across the top of each alleged recess (i.e., cavities 80, 82, 84, and 86) to form a single wall section and there is no separation between wall sections.

On the other hand, the recesses 60, 62, 64 simply are small notches along the lower edge of the wall 102, as clearly shown in Figures 4 and 5. The wall 102 clearly is not separated by the recesses 60, 62, 64.

Appellants respectfully request reversal of this rejection.

The Examiner's Answer dated August 19, 2010:

The Examiner's Answer dated August 19, 2010, provides an additional annotated Figure 2 of the Fierek et al. reference, which shows the alleged modification of the Fierek et al. reference to include a round opening for an egg as allegedly taught by the Cox reference.

The Examiner's Answer asserts that it is common practice to put eggs in a basket and that it does not seem beyond the knowledge generally available to one of ordinary skill to add opening that hold eggs better to make it safer to put all your eggs in one basket. The Examiner's Answer asserts that Appellants' arguments regarding the eggs being vulnerable to damage, and the recess having nothing to do with access to cold air, are not structural differences between the claimed invention and the alleged combination of references.

Appellants respectfully submit that these teachings of the references and deficiencies of the alleged combination are germane to whether one of ordinary skill in the art would have had an apparent reason to make the alleged combination, and indeed, to whether the resultant combination would have been predictable to one of ordinary skill in the art.

As explained above, one of ordinary skill in the art clearly would not have had an apparent reason to modify the compartments 18, 20, 22, and 24 of the Fierek et al. reference to include openings, as taught by Cox et al., since these openings would render the Fierek et al. reference unsatisfactory for its intended purpose of holding tools and accessory items of all shapes and sizes, such as nails, screws, bolts, and other accessories. Hence, there is no suggestion or motivation to make the proposed modification. See M.P.E.P. § 2143.01.

Moreover, if the openings of the Cox et al. reference were provided in the receptacles 18, 20, 22, 24 of the Fierek et al. reference, then the lower end of each of the eggs clearly would be exposed below the bottom surface of the receptacles and vulnerable to damage. One of ordinary skill would not have had an apparent reason to modify the Fierek et al. reference to hold eggs in a manner that would leave the eggs exposed to damage from below. The receptacles.

For at least these reasons, none of the applied references discloses or suggests the claimed invention to one of ordinary skill in the art. Indeed, the applied references have nothing to do with the problems being addressed and solved by the claimed invention.

Claim 13 recites that the surrounding wall is divided into a plurality of wall sections *separated by recesses*.

As explained above, in the Response to Arguments (pages 11-12, bridging paragraph), the final Office Action acknowledged that the end section of the walls above the recesses in Figures 4 or 5 of the Fierek et al. reference are considered to be wall sections that are diametrically opposite to the alleged recess formed in another wall section. Based on this interpretation, the Fierek et al. reference clearly fails to disclose a plurality of wall sections *separated by recesses* formed in the wall surrounding the support plate. Indeed, if the portion

above the alleged recess is a wall section, as apparently alleged, then the wall sections are not actually *separated* from each other by the recesses, as claimed. Rather, the wall sections are still joined to each other across the top of each alleged recess to form a single wall section and there is no separation between wall sections, as clearly shown in the annotated Fig. 4 in the Examiner's Answer.

Thus, none of the applied references discloses or suggests all of the features of independent claim 13.

Appellants respectfully request reversal of this rejection.

Independent Claim 26

Furthermore, none of the applied references discloses or suggests at least an egg tray set for a refrigerator, as recited in independent claim 26.

Claim 26 recites a first egg tray and a second egg tray, each egg tray having a support plate in which a plurality of receptacles for respectively one egg is formed, and a wall surrounding the support plate, wherein the receptacles are formed by openings in the support plate and that the surrounding wall is divided into a plurality of wall sections separated by recesses; a handle projecting upwardly from the support plate of each egg tray above its center of gravity and a slit is formed in the support plate of each egg tray, the handle of one of the egg trays being receivable through the slit of the other egg tray to interconnect the egg trays; and the first and second egg trays being stackable with one another by engagement of the wall sections of one of the egg trays into the recesses of the other egg tray. Emphasis added. In this manner, the present invention provides an extremely stable and space-saving stacking of the first and second egg trays. See, e.g., page 2, lines 20-21; paragraph [008].

As explained above, Appellants note that the final Office Action changes between relying on the recesses (i.e., cavities 80, 82, 84, and 86), as applied to claim 13, to relying on the alleged recesses (60, 62, 64), as applied to independent claims 26 and 35.

As shown in Figure 10 of the Fierek et al. reference, the walls 102 that surround the alleged support plate 68, 70, 72, 74 of a first egg tray clearly do not engage the alleged recesses 60, 62, 64 of a second egg tray when stacked together. Instead, the trays rest on top of each other and the recesses 60, 62, 64 of each tray are engaged by surfaces 40 of the supports 32, 34, and 36, not by the walls 102. See, e.g., Figures 2-8 and 10. As shown in Figures 2-5 and 8, the supports 32, 34, and 36 are formed by cavities 42, 44, 46, not by the wall sections 102.

Indeed, even if the trays were nested within each other, the walls 102 that surround the alleged support plate 68, 70, 72, 74 of a first egg tray clearly do not engage the alleged recesses 60, 62, 64 of a second egg tray when stacked together. Indeed, the walls 102 clearly would not fit into the recesses 60, 62, 64 of a second egg tray. Rather, as explained above, the recesses 60, 62, 64 of each tray are engaged by surfaces 40 of the supports 32, 34, and 36, not by the walls 102. Again, the supports 32, 34, and 36 are formed by cavities 42, 44, 46, not by the wall sections 102.

In the Response to Arguments, the final Office Action asserts that:

“Examiner never referenced fig. 10, it is a different embodiment.
The “term “engage” interpreted by examiner as “To interlock or cause to interlock”. The functional language is met when two of the containers of the combination applied to the claim would be stacked. The structure defined in the rejection meets the broad interpretation of cause to interlock. The language of “fit” is not claimed and the argument has not proven novelty or non-obviousness.”

First, contrary to the assertions in the Response to Arguments of the final Office Action, Figure 10 is not a different embodiment. See, e.g., col. 2, lines 46-48, and col. 3, lines 47-56. Rather, Figure 10 shows a nested arrangement of the tool organizers of the Fierek et al. reference, as shown in Figures 1-9.

Second, Appellants note that a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. Hence, the Fierek et al. reference must be considered as a whole, including Figure 10, for what it fairly teaches one of ordinary skill in the art, irrespective of whether Figures 10 is specifically relied upon by the Office Action.

Third, contrary to the assertions in the Response to Arguments of the final Office Action, claim 26 does not merely recite that two containers are stacked together and engage one another. Rather, claim 26 specifically recites that "the first and second egg trays being stackable with one another by *engagement of the wall sections* of one of the egg trays *into the recesses of the other egg tray.*" Emphasis added. Hence, Appellants respectfully submit that the interpretation in the Office Action of the term "engage" still fails to show how the combination of the Fierek et al. reference and the Cox et al. reference would teach engaging the wall sections into the recesses of the other egg tray, according to the claimed invention.

The Advisory Action

The numbered paragraphs 11-13 of the Advisory Action dated April 6, 2010, further allege that Figure 9 of the Fierek et al. reference clearly shows "engaging the wall sections into the recesses" as claimed. The Advisory Action provides no further support for this assertion. Contrary to the assertions in the Office Action and the Advisory Action, Appellants respectfully submit that the wall sections 102 do not engage into recesses that divide and/or separate the surrounding wall into a plurality of wall sections, as claimed.

As explained above, Appellants note that the final Office Action changes between relying on the recesses (i.e., cavities 80, 82, 84, and 86) to relying on the alleged recesses (60, 62, 64).

The alleged recesses 60, 62, 64 do not separate the surrounding wall 102 into a plurality of wall sections, as claimed. Instead, the recesses 60, 62, 64 simply are small notches along the lower edge of the wall 102, as clearly shown in Figures 4 and 5.

Moreover, the wall sections 102 do not engage the recesses 60, 62, 64. Rather, the recesses 60, 62, 64 of each tray are engaged by surfaces 40 of the supports 32, 34, and 36, not by the sidewalls 102. See, e.g., Figures 2-8 and 10.

Additionally, Appellants respectfully submit that none of the applied references discloses or suggests a handle projecting upwardly from the support plate of each egg tray above its center of gravity and a slit being formed in the support plate of each egg tray, the handle of one of the egg trays being receivable through the slit of the other egg tray to interconnect the egg trays, as recited in claim 26. Contrary to the assertions in the Response to Arguments of the final Office Action, the Fierek et al. reference clearly does not disclose or suggest a slit formed in the egg tray that receives the handle of another egg tray. Instead, the Fierek et al. reference explicitly discloses a hollow interior 28 of the handle 26, not a slit. See, e.g., col. 5, lines 43-45.

Furthermore, Appellants note that, in the Response to Arguments (pages 11-12, bridging paragraph), the final Office Action acknowledges that the end section of the walls above the recesses in Figures 4 or 5 are considered to be wall sections that are diametrically opposite to the alleged recess formed in another wall section. Based on this interpretation, the Fierek et al. reference clearly fails to disclose a plurality of wall section separated by recesses formed in the wall surrounding the support plate. Indeed, if the portion above the alleged recess 60, 62, 64 is a wall section, then the wall sections 102 are not actually separated from each other by the recesses, as claimed. Rather, the wall sections 102 are still joined to each other across the top of each alleged recess 60, 62, 64 to form a single wall section 102 and there is no separation between wall sections.

Thus, none of the applied references discloses or suggests all of the features of independent claim 26.

Appellants respectfully request reversal of this rejection.

The Examiner's Answer dated August 19, 2010:

The Examiner's Answer dated August 19, 2010, provides an annotated Figure 3 of the Fierek et al. reference.

Contrary to these assertions, Appellants respectfully submit that the wall sections 102 do not engage into recesses that divide and/or separate the surrounding wall into a plurality of wall sections, as claimed. As explained above, Appellants note that the final Office Action changes between relying on the recesses (i.e., cavities 80, 82, 84, and 86) to relying on the alleged recesses (60, 62, 64). The alleged recesses 60, 62, 64 do not separate the surrounding wall 102 into a plurality of wall sections, as claimed. Instead, the recesses 60, 62, 64 simply are small notches along the lower edge of the wall 102, as clearly shown in Figures 4 and 5. Moreover, the wall sections 102 do not engage the recesses 60, 62, 64. Rather, the recesses 60, 62, 64 of each tray are engaged by surfaces 40 of the supports 32, 34, and 36, not by the sidewalls 102. See, e.g., Figures 2-8 and 10.

Thus, none of the applied references discloses or suggests all of the features of independent claim 26.

Appellants respectfully request reversal of this rejection.

Independent Claim 35

None of the applied references discloses or suggests an egg tray for a refrigerator, comprising a support plate having an upper surface and a lower surface, the support plate including a plurality of receptacles, each for respectively supporting one egg, the receptacles being openings formed in the support plate; a handle extending from the upper surface of the support plate; and a wall surrounding the support plate, the wall including a plurality of wall sections separated by recesses formed in the wall surrounding the support plate, wherein the plurality of wall sections extend downward from the support plate in a direction opposite from the handle, and wherein each of the plurality of wall sections of the wall surrounding the

support plate is located diametrically opposite to one of the recesses formed in the wall surrounding the support plate, as recited in independent claim 35.

As explained above, Appellants note that the final Office Action changes between relying on the recesses (i.e., cavities 80, 82, 84, and 86) for claim 13, to relying on the alleged recesses (60, 62, 64) for claim 35.

First, contrary to the assertions in the Office Action, Appellants respectfully submit that the alleged recesses 60, 62, 64 do not separate the surrounding wall 102 into a plurality of wall sections, as claimed. Instead, the recesses 60, 62, 64 simply are small notches along the lower edge of the wall 102, as clearly shown in Figures 4 and 5.

Second, as shown in Figures 2 and 3, the Fierek et al. reference clearly does not disclose or suggest wherein each of the plurality of wall sections of the wall surrounding the support plate is located diametrically opposite to one of the recesses 60, 62, 64 formed in the wall surrounding the support plate, as recited in independent claim 35. Instead, each of the wall sections 102 clearly is located diametrically opposite to another wall section 102, not to a recess 60, 62, 64. The recesses 60, 62, 64 are located, at best, opposite to the supports 32, 34, and 36, not to the wall sections 102. As shown in Figures 2-5 and 8, the supports 32, 34, and 36 are formed by cavities 42, 44, 46, not by the wall sections 102.

In the Response to Arguments (pages 11-12, bridging paragraph), the Office Action acknowledges that the end section of the walls above the recesses in Figures 4 or 5 are considered to be wall sections that are diametrically opposite to the alleged recess formed in another wall section. Based on this interpretation, the Fierek et al. reference clearly fails to disclose a plurality of wall section separated by recesses formed in the wall surrounding the support plate. Indeed, if the portion above the alleged recess is a wall section, then the wall sections are not actually separated from each other by the recesses, as claimed. Rather, the wall sections are still joined to each other across the top of each alleged recess to form a single wall section and there is no separation between wall sections.

The numbered paragraph 19 of the Advisory Action dated April 6, 2010, further alleges that the chambers dictionary defines diametrical as 1. belonging or relating to a diameter. 2. along a diameter. 3. said of opinions, etc: directly opposed; very far apart. The Advisory Action alleges that “[a]ll three are easily met by Fierek since it is round.”

Contrary to the assertions in the Advisory Action, Appellants respectfully submit that each of the wall sections 102 clearly is located diametrically opposite to another wall section 102, not to a recess 60, 62, 64. The recesses 60, 62, 64 clearly are opposite to the cavities 42, 44, 46, not to the wall sections 102.

Thus, none of the applied references discloses or suggests all of the features of independent claim 35.

Appellants respectfully request withdrawal of this rejection.

The Examiner's Answer dated August 19, 2010:

The Examiner's Answer dated August 19, 2010, provides an annotated Figure 8 of the Fierek et al. reference.

As explained above, Appellants note that the final Office Action changes between relying on the recesses (i.e., cavities 80, 82, 84, and 86) for claim 13, to relying on the alleged recesses (60, 62, 64) for claim 35. The alleged recesses 60, 62, 64 do not separate the surrounding wall 102 into a plurality of wall sections, as claimed. Instead, the recesses 60, 62, 64 simply are small notches along the lower edge of the wall 102, as clearly shown in Figures 4 and 5. The Fierek et al. reference clearly does not disclose or suggest wherein each of the plurality of wall sections of the wall surrounding the support plate is located diametrically opposite to one of the recesses 60, 62, 64 formed in the wall surrounding the support plate, as recited in independent claim 35. Instead, each of the wall sections 102 clearly is located diametrically opposite to another wall section 102, not to a recess 60, 62, 64. The recesses 60, 62, 64 are located, at best, opposite to the supports 32, 34, and 36, not to the wall sections

102. As shown in Figures 2-5 and 8, the supports 32, 34, and 36 are formed by cavities 42, 44, 46, not by the wall sections 102.

Thus, none of the applied references discloses or suggests all of the features of independent claim 35.

Appellants respectfully request withdrawal of this rejection.

Claims 14-25, 27-32, and 34

Appellants respectfully submit that none of the applied references discloses or suggests the features of claims 14-25, 27-32, and 34 for at least the reasons set forth above, as well as for the additional features recited therein.

For example, none of the applied references discloses or suggests at least that a section of the circumference of the support plate on which an upright wall section is arranged so that it projects over the circumference is located *diametrically opposite* to a section of the circumference on which a recess is located, as recited in claim 15.

Instead, as shown in Figures 2 and 3, the Fierck et al. reference clearly does not disclose or suggest that the wall sections are located *diametrically opposite* to a section of the circumference on which a recess is located. Instead, each of the wall sections 102 clearly is located diametrically opposite to another wall section 102, not to a recess 80, 82, 84, 86 or a recess 60, 62, 64.

As explained above, the final Office Action changes between relying on the recesses (i.e., cavities 80, 82, 84, and 86) for claim 13, to relying on the alleged recesses (60, 62, 64) for claim 35.

Appellants respectfully submit that the alleged recesses 60, 62, 64 do not separate the surrounding wall 102 into a plurality of wall sections, as claimed. Instead, the recesses 60, 62, 64 simply are small notches along the lower edge of the wall 102, as clearly shown in Figures 4 and 5.

As shown in Figures 2 and 3, the Fierek et al. reference clearly does not disclose or suggest wherein each of the plurality of wall sections of the wall surrounding the support plate is located diametrically opposite to one of the recesses 60, 62, 64 formed in the wall surrounding the support plate, as recited in independent claim 35. Instead, each of the wall sections 102 clearly is located diametrically opposite to another wall section 102, not to a recess 60, 62, 64. The recesses 60, 62, 64 are located, at best, opposite to the supports 32, 34, and 36, not to the wall sections 102. As shown in Figures 2-5 and 8, the supports 32, 34, and 36 are formed by cavities 42, 44, 46, not by the wall sections 102. Hence, the recesses 60, 62, 64 clearly are opposite to the cavities 42, 44, 46, not to the wall sections 102.

Moreover, in the Response to Arguments (pages 11-12, bridging paragraph), the Office Action acknowledges that the end section of the walls above the recesses in Figures 4 or 5 are considered to be wall sections that are diametrically opposite to the alleged recess formed in another wall section. Based on this interpretation, the Fierek et al. reference clearly fails to disclose a plurality of wall section separated by recesses formed in the wall surrounding the support plate. Indeed, if the portion above the alleged recess is a wall section, then the wall sections are not actually separated from each other by the recesses, as claimed. Rather, the wall sections are still joined to each other across the top of each alleged recess to form a single wall section and there is no separation between wall sections.

Thus, none of the applied reference discloses or suggests at least the features of claim 15. Appellants submit that these features are important for providing an egg tray that can be stacked with a second egg tray in a configuration twisted by 180° with respect to one another, where respectively one wall section of one egg tray engages in a gap between two wall sections of the other egg tray, thereby providing an extremely stable and space-saving stacking of the egg trays. See, e.g., page 2, lines 13-21; paragraph [008].

Similar to independent claim 26, claim 21 recites that the two egg trays can be stacked by engagement of the wall sections of one of the egg trays into the recesses of the other egg

tray. Thus, none of the applied references discloses or suggests the features of claim 21 for at least the same reasons as set forth above with respect to claim 26.

Similar to independent claim 26, claim 23 recites that a slit is formed in the support plate through which a handle of a second egg tray can be passed. Thus, none of the applied references discloses or suggests the features of claim 23 for at least the same reasons as set forth above with respect to claim 26.

Moreover, none of the applied references discloses or suggests at least wherein the support plate has an upper surface and a lower surface, and wherein the wall sections project over the circumference of the support plate and downward from the support plate in a direction opposite from the upper surface, as recited in claim 31. Instead, in the Fierek et al. reference, the wall sections 102 clearly extend upward from the alleged support plate 68, 70, 72, 74.

As explained above, none of the applied references discloses or suggests at least each of the plurality of wall sections of the surrounding wall is located diametrically opposite to a recess of the surrounding wall, as recited in claim 32.

None of the applied references discloses or suggests at least that, when the egg tray and the second egg tray are twisted 180° with respect to each other and stacked together, the plurality of wall sections of the egg tray engage the recesses of the second egg tray and the plurality of second wall sections of the second egg tray engage the recesses of the egg tray, as recited in claim 34. Instead, as shown in Figure 10 of the Fierek et al. reference, the walls 102 that surround the alleged support plate 68, 70, 72, 74 of a first egg tray clearly do not engage the alleged recesses 80, 82, 84, 86 or 60, 62, 64 of a second egg tray when stacked together. Instead, the trays rest on top of each other. Moreover, even if the trays were nested within each other, the walls 102 that *surround* the alleged support plate 68, 70, 72, 74 of a first egg tray clearly do not engage the alleged recesses 80, 82, 84, 86 or 60, 62, 64 of a second egg tray when stacked together. Indeed, the walls 102 clearly would not fit into the recesses 80, 82, 84, 86 or 60, 62, 64 of a second egg tray.

For at least these reasons, Appellants respectfully submit that the features of claims 14-25, 27-32, and 34 are not rendered obvious from the applied references.

Appellants respectfully request reversal of this rejection.

- d. Claim 33 is NOT unpatentable under 35 U.S.C. § 103(a) over the Fierek et al. reference, the Cox et al. reference, and further in view of the Peeples reference (U.S. Patent No. 3,392,874).

Claim 33 is rejected under 35 U.S.C. § 103(a) as being unpatentable over the Fierek et al. reference, the Cox et al. reference, and further in view of the Peeples reference (U.S. Patent No. 3,392,874).

Appellants respectfully traverse this rejection.

The Fierek et al. reference and the Cox reference do not teach or suggest the features of independent claim 13, from which claim 33 depends. The Peeples reference does not remedy the deficiencies of the Fierek et al. reference and the Cox reference with respect to claim 13. Therefore, claim 33 is patentable over these references at least by virtue of its dependency from claim 13.

Moreover, contrary to the assertions in the Office Action, the Peeples reference clearly fails to disclose wherein the handle is a plate, and wherein only one surface of the handle is directly adjacent to the slit, as recited in claim 33. Emphasis added.

Instead, as clearly shown in Figures 1-3, and particularly Figure 2, the Peeples reference discloses that both sides of the alleged plate handle 16e are directly adjacent to the slit 15, since the alleged plate handle is disposed in the middle of the slit.

The Office Action appears to be alleging that the other handles assembled together somehow result in only one side of the plate handle 16e allegedly being directly adjacent to the slit 15. However, claim 33 recites the features of the handle and slit of the same plate. Therefore, the position of the handles of *other* plates is irrelevant to claim 33.

As shown in Figure 2, each individual plate has a plate handle 16c and a slit 15, and in each case, the alleged plate handle is disposed within the middle of the slit 15 such that both sides of the plate handle 16c clearly are directly adjacent to the slit 15.

For at least the foregoing reasons, none of the applied references, either individually or in combination, renders obvious the features of claim 33.

The Advisory Action dated April 6, 2010

The numbered paragraph 23 of the Advisory Action alleges that Figure 1 of the Cox reference, instead of the Peebles reference, shows the top tray having a handle on one side and a slit on the other side. The Advisory Action provides no further explanation as to what features of Figure 1 are being relied upon.

First, Appellants respectfully submit that this statement in the Advisory Action directly contradicts the acknowledgement in the final Office Action that the Fierek et al reference and the Cox reference fail to disclose these features. See final Office Action at page 7.

Second, contrary to the assertions in the Advisory Action, Figure 1 clearly fails to show wherein the handle is a plate, and wherein only one surface of the handle is directly adjacent to the slit, as recited in claim 33. Indeed, Figure 1 of the Cox reference does not disclose a slit at all. Hence, it is entirely unclear how the Cox reference allegedly makes up for the deficiencies of the Fierek et al reference or the Peebles reference.

Appellants respectfully request reversal of this rejection.

(8) CONCLUSION

In view of the foregoing discussion, Appellants respectfully request reversal of the Examiner's rejections.

Respectfully submitted,

/Andre Pallapies/

Andre Pallapies
Registration No. 62,246
October 07, 2010

BSH Home Appliances Corporation
100 Bosch Boulevard
New Bern, NC 28562
Phone: 252-672-7927
Fax: 714-845-2807
andre.pallapies@bshg.com

CLAIMS APPENDIX

1 - 12 (Canceled)

13. (Rejected) An egg tray for a refrigerator, comprising a support plate in which a plurality of receptacles for respectively one egg is formed, and a wall surrounding the support plate, wherein the receptacles are formed by openings in the support plate and that the surrounding wall is divided into a plurality of wall sections separated by recesses.
14. (Rejected) The egg tray according to claim 13, wherein the wall sections are each constructed such that they project over a circumference of the support plate.
15. (Rejected) The egg tray according to claim 14, wherein a section of the circumference of the support plate on which an upright wall section is arranged so that it projects over the circumference is located diametrically opposite to a section of the circumference on which a recess is located.
16. (Rejected) The egg tray according to claim 14, wherein at least two wall sections are arranged on a longitudinal edge of the support plate.
17. (Rejected) The egg tray according to claim 13, further comprising a spacer disposed on an underside of the support plate.
18. (Rejected) The egg tray according to claim 13, further comprising a second egg tray including a second support plate in which a plurality of receptacles for respectively one egg is formed, and a second wall surrounding the second support plate, wherein

the receptacles are formed by openings in the second support plate and that the second surrounding wall is divided into a plurality of second wall sections separated by recesses.

- 19. (Rejected) The egg trays according to claim 18, wherein the wall sections of the egg tray differ in height from the second wall sections of the second egg tray.
- 20. (Rejected) The egg trays according to claim 18, wherein the wall sections of the egg tray and the second wall sections of the second egg tray have substantially the same dimensions with regard to height.
- 21. (Rejected) The egg trays according to claim 18, wherein the two egg trays can be stacked by engagement of the wall sections of one of the egg trays into the recesses of the other egg tray.
- 22. (Rejected) The egg tray according to claim 13, further comprising a handle projecting from the support plate above its center of gravity.
- 23. (Rejected) The egg tray according to claim 22, wherein in addition to the handle, a slit is formed in the support plate through which a handle of a second egg tray can be passed.
- 24. (Rejected) The egg tray according to claim 22, wherein the handle has the form of a plate and that one surface of the plate is directly adjacent to the slit.
- 25. (Rejected) The egg tray according to claim 24, wherein the plate is thicker in its upper area.

26. (Rejected) An egg tray set for a refrigerator, comprising:
 - a first egg tray and a second egg tray, each egg tray having a support plate in which a plurality of receptacles for respectively one egg is formed, and a wall surrounding the support plate, wherein the receptacles are formed by openings in the support plate and that the surrounding wall is divided into a plurality of wall sections separated by recesses;
 - a handle projecting upwardly from the support plate of each egg tray above its center of gravity and a slit is formed in the support plate of each egg tray, the handle of one of the egg trays being receivable through the slit of the other egg tray to interconnect the egg trays; and
 - the first and second egg trays being stackable with one another by engagement of the wall sections of one of the egg trays into the recesses of the other egg tray.
27. (Rejected) The egg tray set according to claim 26, wherein the wall sections of the first egg tray differ in height from the wall sections of the second egg tray.
28. (Rejected) The egg tray set according to claim 26, wherein the wall sections of the first and second egg trays have substantially the same dimensions with regard to height.
29. (Rejected) The egg tray set according to claim 26, wherin each egg tray includes a spacer disposed on an underside of the support plate, the spacer of one of the egg trays contacting a top side of the support plate of the other egg tray to space the support plates of the respective egg trays apart from one another when the egg trays are stacked one above the other.

30. (Rejected) The egg tray set according to claim 26, wherein the receptacles of the first and second trays are aligned with one another when the egg trays are stacked.
31. (Rejected) The egg tray according to claim 13, wherein the support plate has an upper surface and a lower surface, and wherein the wall sections project over a circumference of the support plate and downward from the support plate in a direction opposite from the upper surface.
32. (Rejected) The egg tray according to claim 13, wherein each of the plurality of wall sections of the surrounding wall is located diametrically opposite to a recess of the surrounding wall.
33. (Rejected) The egg tray according to claim 22, wherein the handle is a plate, and wherein only one surface of the handle is directly adjacent to the slit.
34. (Rejected) The egg trays according to claim 18, wherein, when the egg tray and the second egg tray are twisted 180° with respect to each other and stacked together, the plurality of wall sections of the egg tray engage the recesses of the second egg tray, and the plurality of second wall sections of the second egg tray engage the recesses of the egg tray.
35. (Rejected) An egg tray for a refrigerator, comprising:
a support plate having an upper surface and a lower surface, the support plate including a plurality of receptacles, each for respectively supporting one egg, the receptacles being openings formed in the support plate;
a handle extending from the upper surface of the support plate; and

a wall surrounding the support plate, the wall including a plurality of wall sections separated by recesses formed in the wall surrounding the support plate,
wherein the plurality of wall sections extend downward from the support plate in a direction opposite from the handle, and
wherein each of the plurality of wall sections of the wall surrounding the support plate is located diametrically opposite to one of the recesses formed in the wall surrounding the support plate.

36. (Allowable)

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EVIDENCE APPENDIX

None

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RELATED APPEALS APPENDIX

None